

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FIREMAN'S FUND INSURANCE COMPANY, as
subrogee of Quality King Distributors, Inc.,

Plaintiff,

-against-

NEVER STOP TRUCKING, INC.,

Defendants.

MEMORANDUM AND ORDER
No. 08-CV-3445(FB)(RER)

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Appearance:

For the Plaintiff:

ROBERT W. PHELAN, ESQ.

Cozen O'Connor

45 Broadway, Suite 1600

16th Floor

New York, NY 10006

BLOCK, Senior District Judge:

On July 31, 2009, Magistrate Judge Reyes issued a Report and Recommendation ("R&R") recommending that the Court enter a default judgment against defendant in the amount of \$361,650.52 plus interest. *See* R&R at 8. The R&R also stated that failure to object within ten days would preclude appellate review. *See id.* Attorney for plaintiffs mailed a copy of the R&R to defendant on July 31, 2009; no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure

to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to enter judgment in accordance with the R&R.

SO ORDERED.

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, NY
October 9, 2009